

REMARKS

Initially, Applicant would like to thank the Examiner for the indication that claims 51-56 contain allowable subject matter.

Claim 43 has been amended by incorporating the subject matter of claim 44 into it. Accordingly, claim 44 has been canceled.

Per the Examiner's suggestion in the Office Action, Claims 79 and 80 have been amended so that these claims are directed to methods of lengthening keratin materials. In view of these amendments, Applicant respectfully requests reconsideration and withdrawal of the rejection under 35 U.S.C. § 112, second paragraph.

Claims 43 and 45-81 are currently pending.

The Office Action rejected claims 43-50, 57-60, 62, 63 and 65-81 under 35 U.S.C. § 102 as anticipated by U.S. patent 6,491,931 ("Collin"), claims 43, 59-63, 65 and 69-81 under 35 U.S.C. § 102 as anticipated by U.S. patent 6,726,917 ("Kanji"), and claims 43-50 and 57-81 under 35 U.S.C. § 103 as obvious over Collin and U.S. patent 5,911,974 ("Brieva"). The Office Action also rejected claims 43-50, 59-63, 65 and 69-80 under the judicially created doctrine of obviousness-type double patenting as obvious over the claims in Collin and claims 43, 59-63, 65 and 69-80 as obvious over claims in Kanji. In view of the following comments, Applicant respectfully requests reconsideration and withdrawal of these rejections.

The claimed invention relates to compositions comprising rigid, substantially rectilinear polymeric fibers. By incorporating the subject matter of claim 44 into claim 43, all of the claims require a specific rigidity requirement. The claimed rigid, rectilinear fibers are chosen from a select group of available materials: the polymer is selected from the group

consisting of polyurethanes, polyesters, acrylic polymers, polyolefins, non-aromatic polyamides, aromatic polyimide-amides, and mixtures thereof. Nothing in any of the applied art teaches or suggests including the required rigid, substantially rectilinear polymeric fibers made from the required materials in a cosmetic composition, let alone any of the benefits associated with the inclusion of such fibers in a cosmetic composition (for example, improved eyelash lengthening properties). In short, the applied art would not lead one skilled in the art to the claimed invention and, thus, neither teaches nor suggests the claimed invention.

In the past, only flexible fibers have been used in mascara compositions. Such flexible fibers do not satisfy the rigidity requirements now set forth in claim 43. (See, page 6, lines 13-31 of the present specification, particularly lines 21-26, for further explanation of the claimed rigidity requirements). The present invention represents the first time that rigid, substantially rectilinear polymeric fibers have been used in a cosmetic composition, particularly a mascara composition. Thus, when the applied art refers to “fibers,” it refers to conventional, flexible fibers which do not satisfy the required definition of rigidity. That is, the applied art teaches or suggests only conventional compositions containing flexible fibers. Nowhere does any of the art upon which the rejections are based teach or suggest using the required rigid, substantially rectilinear polymeric fibers.

For example, Collin discloses polyamide fibers sold by P. Bonte (col. 2, lines 54-56; example 1). As Applicant will demonstrate shortly in a Rule 132 declaration, such polyamide fibers are flexible, not rigid and substantially rectilinear as required by the pending claims. Thus, Collin neither teaches nor suggests using the required rigid fibers.

Kanji briefly discusses adding fibers to his compositions. However, nowhere does Kanji teach or suggest adding the required rigid, substantially rectilinear polymeric fibers to his compositions. Rather, Kanji's brief disclosure relating to fibers discloses that conventionally known fibers (that is, flexible fibers) could be added to his compositions.

Brieva, which is merely cited for its disclosure of an anhydrous composition, cannot compensate for Collin's and Kanji's deficiencies. None of the applied art would lead one skilled in the art to use the required rigid, substantially rectilinear polymeric fibers in a cosmetic composition.

The difference between flexible and rigid polymeric fibers is substantial. As noted in the present application at pages 6-7, the conceptual difference between the required rigid fibers and conventional flexible fibers can be analogized to the difference between uncooked spaghetti (rigid fiber) and cooked spaghetti (flexible fiber), and this physical difference in fibers results in significant differences in effect of the fibers, particularly with respect to lengthening of eyelashes: the rigidity of the claimed fibers allows for better arrangement of fibers in relationship to eyelashes, providing an enhanced lengthening effect, whereas the flexibility of conventional fibers results in more random arrangement of fibers, meaning that the lengthening effect is inferior.

Nowhere does any of the applied art teach or suggest using the required rigid, substantially rectilinear polymeric fibers, or any benefits arising from such use.

For all of the above reasons, Applicant respectfully requests reconsideration and withdrawal of the pending rejections under 35 U.S.C. §§ 102 and 103.

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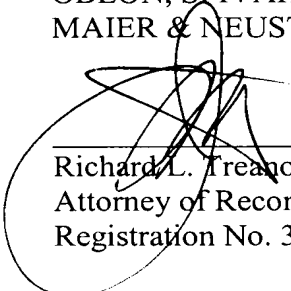
Regarding the double patenting rejections, Applicant respectfully requests reconsideration and withdrawal of these rejections for the same reasons. The claims in Collin and Kanji, like the disclosures in these references, neither teach nor suggest the required rigid polymeric fibers. In other words, the claims in these references would not lead one skilled in the art to the invention compositions containing the required rigid polymeric fibers. Rather, the claims in these references would only lead to conventional compositions containing flexible fibers.

In view of the above, Applicant respectfully requests reconsideration and withdrawal of the pending double patenting rejections.

Applicant believes that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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